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EXAMINER

VAN DOREN, BETH

ART UNIT PAPER NUMBER

3623

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/766,324

Applicant(s)

THOMAS ET AL

Examiner

Beth Van Doren

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-17 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1,3-17 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The following is a Final office action in response to communications filed 12/20/04.

Claims 1 and 16 have been amended. Claims 2 and 18-22 have been canceled. Claims 1, 3-17, and 23 are pending.

Response to Amendments

3. Applicant's amendment to claim 16 is sufficient to overcome the claim objection set forth in the previous office action.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 1-5, 8-9, 11-15, and 17 are rejected under 35 U.S.C. 102(a) as being anticipated by MassPike's Fast Lane Program (www.massturnpike.com).

6. As per claim 1, MassPike's Fast Lane Program teaches a method to attribute, reconcile, and account for automated vehicle identification charges arising from a vehicle's usage, irrespective of said vehicle's ownership comprising:

(a) acquiring multiple automated vehicle identification tags containing encoded identification data from an automated vehicle identification tag issuance authority by a host reconciliation and accounting entity and further comprise the assignment of a subset of said

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automated vehicle identification tags to at least one multiple vehicle leasing entity (See page 1, sections 1-2, page 3, page 6, sections 2-3, page 7, section 1, and page 12, section 1, which discuss acquiring multiple id tags from an issuance authority via an application, the tags identifying the account associated with each vehicle. Multiple tags are acquired and vehicle tags are assigned to a vehicle leasing entity (livery and commercial vehicles). See page 13);

(b) physically associating each tag with a specific fleet vehicle (See page 6, sections 1 and 3, page 7, section 1, page 12, section 1, wherein each tag is associated with a vehicle);

(c) digitally recording and associating information identifying said physically associated tag and fleet vehicle (See at least page 6, sections 1 and 3, page 7, section 1, page 12, sections 1 and 2, wherein the physically associated tag is digitally associated to the account);

(d) machine-reading the associated tag's encoded information while the vehicle of (d) is in the proximity of an automated vehicle identification tag monitoring location (See page 1, section 1, and page 3, section 1, wherein a machine reads the tag's encoded information as the vehicle passes through the toll plaza);

(e) acquiring and storing within a database the machine-read data communicated of (d) to a host reconciliation and accounting entity from at least one multiple vehicle leasing entity (See pages 11-13, wherein the data is stored after being acquired at the monitoring location);

(f) acquiring and storing within the database daily vehicle activity records which have been communicated to said host reconciliation and accounting entity from at least one multiple vehicle leasing entity (See page 7, section 1, page 12, sections 1 and 2, and page 13, wherein vehicle activity records are stored);

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(g) reconciling said acquired daily activity records and said machine-read data (See at least page 6, sections 1 and 3, page 7, section 1, page 12, sections 1 and 2, wherein the activity records and the machine data are brought together);

(h) communicating at least one credit charge billing statement resulting from said reconciliation and accounting entity to a credit charge acceptance entity (See at least page 1, sections 1 and 3, page 11, page 12, sections 1-2, wherein a credit charge acceptance entity receives a credit charge); and

(i) receiving payment related to said communicated billing statement (See at least page 1, sections 1 and 3, page 11, page 12, sections 1-2, wherein a payment is received).

7. As per claim 3, MassPike's Fast Lane Program teaches a method wherein said multiple automated vehicle identification tags are acquired by a multiple vehicle leasing entity and further comprises the communication of tags and physically associated specific fleet vehicle identification information from said multiple vehicle leasing entity to said host reconciliation and accounting entity for registration (See page 1, sections 1-2, page 3, page 6, sections 2-3, page 7, section 1, page 12, sections 1 and 2, and page 13, wherein multiple tags are acquired and vehicle tags are assigned to a vehicle leasing entity (livery and commercial vehicles). Each tag is registered with the system).

8. As per claim 4, MassPike's Fast Lane Program teaches wherein said data is first generated from a plurality of tag monitoring locations and then communicated to said host reconciliation and accounting entity from a data compiling entity (See page 1, sections 1-3, page 6, sections 1 and 3, page 7, section 1, page 12, sections 1 and 2, wherein the tag information is generated at the monitoring location and then communicated in order to charge the tag account).

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9. As per claim 5, MassPike's Fast Lane Program discloses wherein said transmission of machine-read data to a host reconciliation and accounting entity includes information chosen from an information grouping including:

(a) individualized tag identification information (See at least page 1, sections 1-3, page 6, sections 1 and 3, page 7, section 1, page 12, sections 1 and 2, wherein the individual tag is identified);

(b) date and time tag charge occurrence (See at least page 1, sections 1-3, page 6, sections 1 and 3, page 7, section 1, page 12, sections 1 and 2, wherein the charge occurrence information is identified);

(c) monitoring station tag cost assessment (See at least page 1, sections 1-3, page 6, sections 1 and 3, page 7, section 1, page 12, sections 1 and 2, wherein the monitoring station charge is identified); and

(d) adjustment to monitoring station tag cost assessment (See at least page 1, sections 1-3, page 6, sections 1 and 3, page 7, section 1, page 12, sections 1 and 2, wherein the tag account is adjusted based on the cost assessment).

10. As per claim 8, MassPike's Fast Lane Program discloses wherein said credit charge acceptance entity is an individual responsible for payment of charges relating to said credit charge information (See page 1, sections 2-3, page 6, sections 3-4, page 9, page 11, and page 12, sections 1-2, wherein an individual is associated with the credit charge information and the associated credit card).

11. As per claim 9, teaches a method wherein said credit charge acceptance entity is a business entity responsible for payment of charges relating to said credit card information (See at

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least page 1, sections 2-3, page 6, sections 3-4, page 9, page 11, and page 12, sections 1-2, wherein the entity is a business entity, such as with commercial vehicles, taxis, livery, etc.).

12. As per claim 11, MassPike's Fast Lane Program discloses a method wherein said acquiring of said machine-read data and said daily activity records is facilitated via a computer compatible communications network (See pages 1, section 1, page 12, and page 13, which discloses a computer compatible communications network).

13. As per claim 12, MassPike's Fast Lane Program teaches wherein said communicating of credit charge information is facilitated via a computer compatible communications network (See at least page 1, sections 2-3, page 6, sections 3-4, page 9, page 11, page 12, sections 1-2, and page 13, which discloses a computer compatible network).

14. As per claim 13, MassPike's Fast Lane Program teaches a method further comprising:

(a) communicating vehicle identification information describing vehicles with which said tags have become physically associated from said reconciliation and accounting entity to a tag issuance authority (See at least page 6, sections 1-3, pages 9-10, and page 12, sections 1-2, wherein the vehicle identification associated with the tag is communicated);

(b) communicating lost or stolen associated tags from said reconciliation and accounting entity to a tag issuance authority (See at least page 1, sections 2-3, and page 10, section f, wherein lost or stolen tags are reported),

(c) deactivating said communicated lost or stolen tags (See at least page 10, section f, wherein the tag is deactivated after notification).

15. As per claim 14, MassPike's Fast Lane Program discloses a method further comprising:

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(a) communicating a billing statement from a tag issuance authority to said reconciliation and accounting entity (See at least page 1, sections 1-3, page 11, and page 12, sections 1-2, wherein the billing statement is issued to a reconciliation/accounting entity),

(b) reconciling said communicated billing statement with tags issued to said reconciliation and accounting entity (See at least page 1, sections 1-3, page 11, and page 12, sections 1-2, wherein the bill is reconciled);

(c) communicating payment relating to said billing statement from said reconciliation and accounting entity to said tag issuance authority (See at least page 1, sections 1-3, page 11, and page 12, sections 1-2, wherein payment is made).

16. As per claim 15, MassPike's Fast Lane Program teaches further including the calculation and addition of a processing surcharge fee to said reconciled daily activity records and machine read data (See at least page 10, which discusses a 1% surcharge fee).

17. As per claim 16, MassPike's Fast Lane Program teaches wherein communicating said credit charge information further comprises communicating a rebate credit to said credit charge acceptance entity (See page 1, section 2, wherein a refund occurs).

18. As per claim 17, MassPike's Fast Lane Program discloses a method further comprising the transmission of accrued vehicle toll charges from said host reconciliation and accounting authority to said multiple vehicle leasing entity (See at least page 12, sections 1-2, wherein the toll charges are transmitted to the multiple vehicle leasing entity).

19. As per claim 23, MassPike's Fast Lane Program teaches the communication of advisory information from said host reconciliation and accounting entity to said credit charge acceptance

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entity (See page 1, sections 2-3, and pages 8, 10-11, wherein advisory information about a low or no balancing requiring debiting is communicated).

Claim Rejections - 35 USC § 103

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

21. Claims 6-7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over MassPike's Fast Lane Program (www.massturnpike.com).

22. As per claim 6, MassPike's Fast Lane Program teaches a method wherein said acquiring of daily vehicle activity records for vehicles to which said tags have become associated includes records comprising:

(a) date and time periods each vehicle was utilized (See page 12, sections 1-2, wherein the date and time periods a vehicle was used is known); and

(b) commercial drivers driving said vehicle associated with the tags, tracking each vehicle using the monthly statements (See page 12, sections 1-2, wherein commercial drivers drive vehicles associated with the tags and the vehicles are tracked in monthly statements).

However, where MassPike's Fast Lane Program discloses activity records of the vehicles driven by drivers of a commercial fleet and drivers associated with accounts of fleets, MassPike's Fast Lane Program does not expressly disclose driver identification for each period of vehicle utilization.

MassPike's Fast Lane Program discloses a system for commercial vehicles that tracks monthly usage of vehicles with the electronic tags. MassPike's Fast Lane Program also discloses drivers being signed up with the system associated with the tag account. It is well known that a commercial vehicle operation maintains a schedule of drivers that are working on specific days. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to associate a specific tag of the commercial vehicle of MassPike's Fast Lane Program with a specific driver in order to more efficiently track the activity of a specific driver of the system. MassPike's Fast Lane Program discusses how the MassPike's Fast Lane Program has been invaluable for tracking the commercial vehicles activity and for auditing purpose.

23. As per claim 7, MassPike's Fast Lane Program teaches a method wherein driver account information further comprises:

- (a) a driver's name (See page 9, which discloses a name);
- (b) a driver's address (See page 9, which discloses an address);
- (c) a driver's telephone number (See page 9, which discloses a telephone number);
- (d) a driver's credit card name, number and expiration date information (See page 9, which discloses credit card information); and

MassPike's Fast Lane Program teaches commercial accounts for a fleet of vehicles driven by drivers (See page 12, sections 1-2).

However, where MassPike's Fast Lane Program discloses activity records of the vehicles driven by drivers of a commercial fleet and drivers associated with accounts of fleets, MassPike's Fast Lane Program does not expressly disclose driver identification for each period of vehicle utilization.

MassPike's Fast Lane Program discloses a system for commercial vehicles that tracks monthly usage of vehicles with the electronic tags. MassPike's Fast Lane Program also discloses drivers being signed up with the system associated with the tag account. It is well known that a commercial vehicle operation maintains a schedule of drivers that are working on specific days. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to associate a specific tag of the commercial vehicle of MassPike's Fast Lane Program with a specific driver in order to more efficiently track the activity of a specific driver of the system. MassPike's Fast Lane Program discusses how the MassPike's Fast Lane Program has been invaluable for tracking the commercial vehicles activity and for auditing purpose.

24. As per claim 10, MassPike's Fast Lane Program teaches a method wherein communicating said credit charge information resulting from said reconciliation and accounting entity to a credit charge acceptance entity, further comprises:

(a) communicating the name of a vehicle account holder for a specific time and date (See page 1, sections 1-2, page 3, page 6, sections 2-3, page 7, section 1, and page 12, section 1, wherein the account holder is communicated);

(b) communicating tag usage charges for said time and date (See page 1, sections 1-2, page 3, page 6, sections 2-3, page 7, section 1, and page 12, section 1, wherein the tag usage charges are communicated); and

(c) communicating said account holder's credit card name, number, billing address and expiration date (See page 1, sections 1-2, page 3, page 6, sections 2-3, page 7, section 1, page 9, and page 12, section 1, wherein the account has a credit card name, number, billing address and expiration date).

However, where MassPike's Fast Lane Program discloses activity records of the vehicles driven by driver's of a commercial fleet, account holders associated with the vehicle, and drivers associated with accounts, MassPike's Fast Lane Program does not expressly disclose driver identification for each period of vehicle utilization.

MassPike's Fast Lane Program discloses a system for commercial vehicles that tracks monthly usage of vehicles with the electronic tags. MassPike's Fast Lane Program also discloses drivers being signed up with the system associated with the tag account. It is well known that a commercial vehicle operation maintains a schedule of drivers that are working on specific days. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to associate a specific tag of the commercial vehicle of MassPike's Fast Lane Program with a specific driver in order to more efficiently track the activity of a specific driver of the system. MassPike's Fast Lane Program discusses how the MassPike's Fast Lane Program has been invaluable for tracking the commercial vehicles activity and for auditing purpose.

Response to Arguments

25. Applicant's arguments with regards to the rejections based on MassPike's Fast Lane Program (www.massturnpike.com) have been fully considered, but they are not persuasive. In the remarks, Applicant argues that MassPike's Fast Lane Program does not teach or suggest (1) identifying and subsequently billing back the specific driver of the vehicle at the time of the charge, but instead teaches charging the owner of the tag, (2) claim 1(b) whereupon the single tag may be applied to various vehicles and charging the drivers of those vehicle during the period of charge occurrence, and that (3) the combination of references does not teach the limitations of claims 6, 10, and 18 nor is there motivation to support the combination.

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In response to arguments (1) and (2), Examiner respectfully disagrees. There are no recitation in claims 1, 3-5, 8-9, 11-17, or 23 of any driver or subsequent billing of a specific driver for use of a vehicle at time of the charge. Element 1(b) argued by applicant as supporting this “charging the drivers of those vehicle during the period of charge occurrence” further makes no reference to a driver or charging a driver, merely that an a acquired tag is physically associated with any vehicle. While claim 6 recites “driver identification for each period of vehicle utilization” and claim 7 recites types of identification data, claims 6 and 7 are for acquiring daily vehicle activity records for the tags and do not contain any recitation of charges occurring. It is only claim 10 that recites any communication of the name of the vehicle driver at a specific date and time, the tag usage charges, and the driver’s credit card information. Claim 10 will be addressed further below in response to argument (3). Therefore, Examiner notes that the features upon which applicant relies (i.e., billing back the specific driver of the vehicle at the time of the charge) are not recited in the rejected claims 1, 2-9, 11-17, and 23. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to argument (3), Examiner first notes that claim 18 is no longer pending and further was not rejected under 35 USC § 103 in the previous office action. Therefore, this argument with regards to claim 18 is not applicable and is moot.

As for claims 6 and 10, Examiner respectfully disagrees with applicant’s arguments. Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge

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generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Specifically, as for claim 6, Examiner maintains her rejection and asserts there is motivation, found in the reference, to combine. MassPike's Fast Lane Program teaches acquiring daily activity records for vehicles with associated tags, the records including date and time periods of use. These daily records are tracked in a monthly statement. MassPike's Fast Lane Program further discusses commercial drivers driving vehicles associated with the tags that are tracked in the monthly statements. See page 12, sections 1-2. However, MassPike's Fast Lane Program does not expressly disclose driver identification being explicitly included in the monthly statements. Examiner notes, as discussed above, that claim 6 is directed to merely acquiring data, the data associated with daily activity records. The data itself has no functional impact on the method of the claim (i.e. non-functional data). Therefore, since MassPike's Fast Lane Program discloses both drivers being signed up with the system associated with the tag account and how the MassPike's Fast Lane Program has been invaluable for tracking the commercial vehicles activity and for auditing purpose, and since it is well known that a commercial vehicle operation maintains a schedule of drivers that are working on specific days, Examiner maintains her obviousness statement and her motivation.

As for claim 10, MassPike's Fast Lane Program discloses communicating the name of a vehicle account holder for a specific time and date, communicating tag usage charges for said time and date, and communicating said account holder's credit card name, number, billing address and expiration date. See page 1, sections 1-2, page 3, page 6, sections 2-3, page 7, section 1, and page 12, section 1. However, MassPike's Fast Lane Program does not expressly

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disclose that it is the driver's name or credit card being communicated. As discussed above with regards to claim 6, MassPike's Fast Lane Program discloses a system for commercial vehicles that tracks monthly usage of vehicles with the electronic tags. Examiner points out that the system of MassPike's Fast Lane Program is capable of communicating name and credit card information to allow the charging for tags. Therefore, since it is well known that a commercial vehicle operation maintains a schedule of drivers that are working on specific days and since MassPike's Fast Lane Program discloses a benefit of the program as detailed monthly invoices allowing for auditing, it would have been obvious to associate the identity and other profile information of the driver with the car.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (571) 272-6737.


The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lwd
bvd

June 11, 2005


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